

SECOND REGULAR SESSION

HOUSE BILL NO. 1138

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROWLAND.

4142H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 452.340, RSMo, and to enact in lieu thereof one new section relating to child support.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 452.340, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.340, to read as follows:

452.340. 1. In a proceeding for dissolution of marriage, legal separation or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the support of the child, including an award retroactive to the date of filing the petition, without regard to marital misconduct, after considering all relevant factors including:

- (1) The financial needs and resources of the child;
- (2) The financial resources and needs of the parents;
- (3) The standard of living the child would have enjoyed had the marriage not been dissolved;
- (4) The physical and emotional condition of the child, and the child's educational needs;
- (5) The child's physical and legal custody arrangements, including the amount of time the child spends with each parent and the reasonable expenses associated with the custody or visitation arrangements; and
- (6) The reasonable work-related child care expenses of each parent.

2. The obligation of the parent ordered to make support payments shall abate, in whole or in part, for such periods of time in excess of thirty consecutive days that the other parent has voluntarily relinquished physical custody of a child to the parent ordered to pay child support,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 notwithstanding any periods of visitation or temporary physical and legal or physical or legal
19 custody pursuant to a judgment of dissolution or legal separation or any modification thereof.
20 In a IV-D case, the family support division may determine the amount of the abatement pursuant
21 to this subsection for any child support order and shall record the amount of abatement in the
22 automated child support system record established pursuant to chapter 454. If the case is not a
23 IV-D case and upon court order, the circuit clerk shall record the amount of abatement in the
24 automated child support system record established in chapter 454.

25 3. Unless the circumstances of the child manifestly dictate otherwise and the court
26 specifically so provides, the obligation of a parent to make child support payments shall
27 terminate when the child:

28 (1) Dies;

29 (2) Marries;

30 (3) Enters active duty in the military;

31 (4) Becomes self-supporting, provided that the custodial parent has relinquished the child
32 from parental control by express or implied consent;

33 (5) Reaches age eighteen, unless the provisions of subsection 4 or 5 of this section apply;
34 or

35 (6) Reaches age twenty-one, unless the provisions of the child support order specifically
36 extend the parental support order past the child's twenty-first birthday for reasons provided by
37 subsection 4 of this section.

38 4. If the child is physically or mentally incapacitated from supporting himself and
39 insolvent and unmarried, the court may extend the parental support obligation past the child's
40 eighteenth birthday.

41 5. If when a child reaches age eighteen, the child is enrolled in and attending a secondary
42 school program of instruction, the parental support obligation shall continue, if the child
43 continues to attend and progresses toward completion of said program, until the child completes
44 such program or reaches age twenty-one, whichever first occurs. If the child is enrolled in an
45 institution of vocational or higher education not later than October first following graduation
46 from a secondary school or completion of a graduation equivalence degree program and so long
47 as the child enrolls for **at least twelve hours of credit** and completes at least twelve hours of
48 credit **with passing grades** each semester, not including the summer semester, at an institution
49 of vocational or higher education and achieves grades sufficient to reenroll at such institution,
50 the parental support obligation shall continue until the child completes his or her education, or
51 until the child reaches the age of twenty-one, whichever first occurs. To remain eligible for such
52 continued parental support, at the beginning of each semester the child shall submit to each
53 parent a transcript or similar official document provided by the institution of vocational or higher

54 education which includes the courses the child is enrolled in and has completed for each term,
55 the grades and credits received for each such course, and an official document from the
56 institution listing the courses which the child is enrolled in for the upcoming term and the
57 number of credits for each such course. When enrolled in at least twelve credit hours, [if the
58 child receives failing grades in half or more of his or her courseload in any one semester] **if the**
59 **child does not complete twelve hours of credit with passing grades, in the absence of a**
60 **finding by the court of extenuating circumstances on behalf of the child causing the failure**
61 **to complete the required credit hours with passing grades,** payment of child support [may]
62 **shall** be terminated and shall not be eligible for reinstatement. Upon request for notification of
63 the child's grades by the noncustodial parent, the child shall produce the required documents to
64 the noncustodial parent within thirty days of receipt of grades from the education institution. If
65 the child fails to produce the required documents, payment of child support [may] **shall** terminate
66 without the accrual of any child support arrearage and shall not be eligible for reinstatement. If
67 the circumstances of the child manifestly dictate, the court may waive the October first deadline
68 for enrollment required by this subsection. If the child is enrolled in such an institution, the child
69 or parent obligated to pay support may petition the court to amend the order to direct the
70 obligated parent to make the payments directly to the child. As used in this section, an
71 "institution of vocational education" means any postsecondary training or schooling for which
72 the student is assessed a fee and attends classes regularly. "Higher education" means any
73 community college, college, or university at which the child attends classes regularly. A child
74 who has been diagnosed with a developmental disability, as defined in section 630.005, or whose
75 physical disability or diagnosed health problem limits the child's ability to carry the number of
76 credit hours prescribed in this subsection, shall remain eligible for child support so long as such
77 child is enrolled in and attending an institution of vocational or higher education, and the child
78 continues to meet the other requirements of this subsection. A child who is employed at least
79 fifteen hours per week during the semester may take as few as nine credit hours per semester and
80 remain eligible for child support so long as **the child completes at least nine hours of credit**
81 **with passing grades during the semester and** all other requirements of this subsection are
82 complied with.

83 6. The court shall consider ordering a parent to waive the right to claim the tax
84 dependency exemption for a child enrolled in an institution of vocational or higher education in
85 favor of the other parent if the application of state and federal tax laws and eligibility for
86 financial aid will make an award of the exemption to the other parent appropriate.

87 7. The general assembly finds and declares that it is the public policy of this state that
88 frequent, continuing and meaningful contact with both parents after the parents have separated
89 or dissolved their marriage is in the best interest of the child except for cases where the court

specifically finds that such contact is not in the best interest of the child. In order to effectuate this public policy, a court with jurisdiction shall enforce visitation, custody and child support orders in the same manner. A court with jurisdiction may abate, in whole or in part, any past or future obligation of support and may transfer the physical and legal or physical or legal custody of one or more children if it finds that a parent has, without good cause, failed to provide visitation or physical and legal or physical or legal custody to the other parent pursuant to the terms of a judgment of dissolution, legal separation or modifications thereof. The court shall also award, if requested and for good cause shown, reasonable expenses, attorney's fees and court costs incurred by the prevailing party.

8. The Missouri supreme court shall have in effect a rule establishing guidelines by which any award of child support shall be made in any judicial or administrative proceeding. Said guidelines shall contain specific, descriptive and numeric criteria which will result in a computation of the support obligation. The guidelines shall address how the amount of child support shall be calculated when an award of joint physical custody results in the child or children spending equal or substantially equal time with both parents and the directions and comments and any tabular representations of the directions and comments for completion of the child support guidelines and a subsequent form developed to reflect the guidelines shall reflect the ability to obtain up to a fifty percent adjustment or credit below the basic child support amount for joint physical custody or visitation as described in subsection 11 of this section. The Missouri supreme court shall publish child support guidelines and specifically list and explain the relevant factors and assumptions that were used to calculate the child support guidelines. Any rule made pursuant to this subsection shall be reviewed by the promulgating body not less than once every four years to ensure that its application results in the determination of appropriate child support award amounts.

9. There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established pursuant to subsection 8 of this section is the correct amount of child support to be awarded. A written finding or specific finding on the record in a judicial or administrative proceeding that the application of the guidelines would be unjust or inappropriate in a particular case, after considering all relevant factors, including the factors set out in subsection 1 of this section, is required if requested by a party and shall be sufficient to rebut the presumption in the case. The written finding or specific finding on the record shall detail the specific relevant factors that required a deviation from the application of the guidelines.

10. Pursuant to this or any other chapter, when a court determines the amount owed by a parent for support provided to a child by another person, other than a parent, prior to the date of filing of a petition requesting support, or when the director of the family support division

establishes the amount of state debt due pursuant to subdivision (2) of subsection 1 of section 454.465, the court or director shall use the guidelines established pursuant to subsection 8 of this section. The amount of child support resulting from the application of the guidelines shall be applied retroactively for a period prior to the establishment of a support order and the length of the period of retroactivity shall be left to the discretion of the court or director. There shall be a rebuttable presumption that the amount resulting from application of the guidelines under subsection 8 of this section constitutes the amount owed by the parent for the period prior to the date of the filing of the petition for support or the period for which state debt is being established. In applying the guidelines to determine a retroactive support amount, when information as to average monthly income is available, the court or director may use the average monthly income of the noncustodial parent, as averaged over the period of retroactivity, in determining the amount of presumed child support owed for the period of retroactivity. The court or director may enter a different amount in a particular case upon finding, after consideration of all relevant factors, including the factors set out in subsection 1 of this section, that there is sufficient cause to rebut the presumed amount.

11. The court may award child support in an amount that provides up to a fifty percent adjustment below the basic child support amount authorized by the child support guidelines described under subsection 8 of this section for custody awards of joint physical custody where the child or children spend equal or substantially equal time with both parents.

12. The obligation of a parent to make child support payments may be terminated as follows:

(1) Provided that the state case registry or child support order contains the child's date of birth, the obligation shall be deemed terminated without further judicial or administrative process when the child reaches age twenty-one if the child support order does not specifically require payment of child support beyond age twenty-one for reasons provided by subsection 4 of this section;

(2) The obligation shall be deemed terminated without further judicial or administrative process when the parent receiving child support furnishes a sworn statement or affidavit notifying the obligor parent of the child's emancipation in accordance with the requirements of subsection 4 of section 452.370, and a copy of such sworn statement or affidavit is filed with the court which entered the order establishing the child support obligation, or the family support division for an order entered under section 454.470;

(3) The obligation shall be deemed terminated without further judicial or administrative process when the parent paying child support files a sworn statement or affidavit with the court which entered the order establishing the child support obligation, or the family support division for an order entered under section 454.470, stating that the child is emancipated and reciting the

162 factual basis for such statement; which statement or affidavit is served by the court or division,
163 as applicable, on the child support obligee; and which is either acknowledged and affirmed by
164 the child support obligee in writing, or which is not responded to in writing within thirty days
165 of receipt by the child support obligee;

166 (4) The obligation shall be terminated as provided by this subdivision by the court which
167 entered the order establishing the child support obligation, or the family support division for an
168 order entered under section 454.470, when the parent paying child support files a sworn
169 statement or affidavit with the court which entered the order establishing the child support
170 obligation, or the family support division, as applicable, stating that the child is emancipated and
171 reciting the factual basis for such statement; and which statement or affidavit is served by the
172 court or division, as applicable, on the child support obligee. If the obligee denies the statement
173 or affidavit, the court or division shall thereupon treat the sworn statement or affidavit as a
174 request for hearing and shall proceed to hear and adjudicate such request for hearing as provided
175 by law; provided that the court may require the payment of a deposit as security for court costs
176 and any accrued court costs, as provided by law, in relation to such request for hearing. When
177 the division receives a request for hearing, the hearing shall be held in the manner provided by
178 section 454.475.

179 13. The court may enter a judgment terminating child support pursuant to subdivisions
180 (1) to (3) of subsection 12 of this section without necessity of a court appearance by either party.
181 The clerk of the court shall mail a copy of a judgment terminating child support entered pursuant
182 to subsection 12 of this section on both the obligor and obligee parents. The supreme court may
183 promulgate uniform forms for sworn statements and affidavits to terminate orders of child
184 support obligations for use pursuant to subsection 12 of this section and subsection 4 of section
185 452.370.

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